No. 82-766

Office Supreme Court, U.S.
FILED
MAR 23 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

SECRETARY OF STATE OF MARYLAND,
Petitioner,

v.

JOSEPH H. MUNSON COMPANY, INC.,
Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND

BRIEF OF PETITIONER

STEPHEN H. SACHS,
Attorney General of Maryland,

DIANA G. MOTZ,
JAMES G. KLAIR,
Assistant Attorneys General,

ROBERT A. ZARNOCH,
Assistant Attorney General,
Counsel of Record,
Seven North Calvert Street,
Baltimore, Maryland 21202,
(301) 576-6338,
Counsel for Petitioner.

The Daily Record Co., Baltimore, MD 21202

QUESTIONS PRESENTED

1. May a professional fund-raiser to whom a percentage limitation on fund-raising fees may be validly applied challenge that limitation on its face with respect to others in the absence of prior restraint or a showing of real and substantial First Amendment overbreadth?

2. Does State law imposing a criminal penalty or authorizing withdrawal of registration from a charity spending more than 25% on fund-raising costs constitute a "prior restraint" on that charity when compliance with percentage limitation is not a condition precedent for registration and a charity may be exempted from the percentage limitation requirement, even after that limitation has been exceeded?

3. Is a percentage limitation only on the fund-raising costs of charities facially unconstitutional *per se* under the First Amendment no matter how moderate, flexible or reasonably applied?

PARTIES

The parties to the proceedings in the Court of Appeals of Maryland were the Joseph H. Munson Company, Inc. and the Secretary of State of Maryland, at that time Fred L. Wineland. Mr. Wineland resigned on July 1, 1982 and was subsequently replaced by Patricia G. Holtz; the term for Ms. Holtz's interim appointment expired and she was replaced by Lorraine M. Sheehan on February 4, 1983.

TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED	2
STATEMENT OF THE CASE	7
SUMMARY OF ARGUMENT	15
ARGUMENT:	
I. A Professional Fund-Raiser, Such As Munson, Lacks Standing To Bring A Facial Challenge To Maryland's Flexible Limitation On Fund-Raising Costs And To Assert The Alleged First Amendment Rights Of Charities	17
A. The Business Relationship Between Munson And Its Clients Does Not Warrant Liberalized Standing In This Case	21
B. The First Amendment Overbreadth Doctrine Does Not Confer Standing On Munson To Assert The Rights Of Its Clients	23
II. A Percentage Limitation On Fund-Raising Costs Of Charities, Which Involves No Prior Restraint And Is Both Flexible And Moderate Does Not Violate The First Amendment	26
A. Section 103D Imposes No Direct Or Substantial Burden On Protected Activity	28
B. Section 103D Furthers Vital State Interests	34
CONCLUSION	40
EXHIBITS	A. 1

TABLE OF CITATIONS

Cases

PAGE

Barrows v. Jackson, 346 U.S. 249, reh'g denied 346 U.S. 841 (1953) 20

Bates v. Little Rock, 361 U.S. 516 (1960) 34

Broadrick v. Oklahoma, 413 U.S. 601 (1973) 23, 24, 25

Brown v. State, 177 Md. 321, 9 A.2d 209 (1939) 21

Brown v. Socialist Worker's 74 Campaign Comm., ___ U.S. ___, 103 S. Ct. 416 (1982) 34

Buckley v. Valeo, 424 U.S. 1 (1976) 34

Bullock v. Carter, 405 U.S. 134 (1972) 28

California Bankers Assn. v. Shultz, 416 U.S. 21, (1974) 34

Cantwell v. Connecticut, 310 U.S. 296 (1940) ... 35

Clark v. State, 284 Md. 260, 396 A.2d 243, *cert. denied*, 444 U.S. 858 (1979) 21

Clements v. Fashing, ___ U.S. ___, 102 S. Ct. 2836, reh'g denied 103 S. Ct. 20 (1982) 27

Craig v. Boren, 429 U.S. 190 (1976) 14, 18, 22, 23

Delaware v. Prouse, 440 U.S. 648 (1979) 21

Eisenstadt v. Baird, 405 U.S. 438 (1972) 16, 23

Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975) 23

Grason v. Florida Legislative Committee, 372 U.S. 539 (1963) 34

Griswold v. Connecticut, 381 U.S. 479 (1965) 20

H. L. v. Matheson, 450 U.S. 398 (1981) 20

Heffron v. International Society for Krishna Consciousness, 452 U.S. 640 (1981) 34

In re William G., 52 Md. App. 131, 447 A.2d 493 (1982) 21

PAGE

Joseph H. Munson Co., Inc. v. Secretary of State, 48 Md. App. 273, 426 A.2d 985 (1981) 1, 13

Joseph H. Munson Co., Inc. v. Secretary of State, 294 Md. 160, 448 A.2d 935 (1982) 1, 26

Larson v. Valente, ___ U.S. ___, 102 S. Ct. 1673, reh'g denied, 102 S. Ct. 2916 (1982) 16, 26, 31

Martin v. Struthers, 319 U.S. 141 (1943) 36

McGowan v. Maryland, 366 U.S. 420 (1961) 20

NAACP v. Alabama, 357 U.S. 449 (1958) 34

National Foundation v. City of Fort Worth, 415 F.2d 41 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970) 13, 16, 26, 31

Schneider v. State, 308 U.S. 147 (1939) 36

Singleton v. Wulff, 428 U.S. 106 (1976) 15, 19, 22, 23

Southeastern Promotions Ltd. v. Conrad, 420 U.S. 546 (1975) 30

Storer v. Brown, 415 U.S. 724 (1974) 28

Thornhill v. Alabama, 310 U.S. 88 (1940) 25

Tax Analysts and Advocates v. Blumenthal, 566 F.2d 130 (D.C.) *cert. denied*, 434 U.S. 1036 (1977) 20

Tileston v. Ullman, 318 U.S. 44 (1943) 20

Village of Schaumburg v. Citizens for Better Environ., 444 U.S. 620 (1980) ..... *passim*

Warth v. Seldin, 422 U.S. 490 (1975) 15, 19

Statutes, Regulations and Ordinances

Constitution of the United States:

Amendment I 2

Amendment XIV 2

	PAGE
United States Code:	
28 U.S.C. § 1257(3)	2
28 U.S.C. § 2101(c)	2
Annotated Code of Maryland:	
Article 41—	
§ 103A	22
§ 103D	*passim*
§ 103L	4, 5, 8
Laws of Maryland for 1976:	
Chapter 679	8, 11
Code of Maryland Regulations:	
01.02.04.05A	5, 9, 32
01.02.04.05B	5, 9, 25, 32
01.02.04.05C	6
Schaumburg Village Code, § 22-20	29, 30, 31, 32, 36, 37, 38, 39

Miscellaneous

65 Opinions of the Attorney General 58 (1980)	10, 14, 29, 33
Annual Report of the Secretary of State (1982)	10, 33
Rees, State Constitutional Law for Maryland Lawyers: Judicial Relief for Violations of Rights, 10 U. Balto. L. Rev. 102 (1980)	21
L. Tribe, American Constitutional Law § 3-18 (1978)	20
Note: Standing to Assert Constitutional *Jus Tertii*, Harv. L. Rev. 423 (1974)	21, 22

No. 82-766

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

SECRETARY OF STATE OF MARYLAND,
Petitioner,

v.

JOSEPH H. MUNSON COMPANY, INC.,
Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND

BRIEF OF PETITIONER

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is reported as *Joseph H. Munson Co., Inc. v. Secretary of State*, 294 Md. 160, 448 A.2d 935 (1982); the text of this opinion appears in the Appendix to the Petition for a Writ of Certiorari (APC 1a).[1] The opinion and judgment of the Court of Special Appeals of Maryland reversed by the State's highest court is reported as *Joseph H. Munson Co., Inc. v. Secretary of State*, 48 Md. App. 273, 426 A.2d 985 (1981), and is also reprinted in the Appendix to the

[1] References to the Appendix to the Petition for a Writ of Certiorari are cited "APC" and references to the Joint Appendix as "A".

Petition for Writ of Certiorari (APC 23a). The opinion and order of the Circuit Court for Anne Arundel County that occasioned an appeal is unreported, but is also reprinted in the Appendix to the Petition for a Writ of Certiorari. (APC 38a).

JURISDICTION

The judgment of the Court of Appeals was entered on August 5, 1982. The jurisdiction of this Court is premised upon 28 U.S.C. Section 1257(3) and 28 U.S.C. Section 2101(c).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

Constitution of the United States

Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ANNOTATED CODE OF MARYLAND

ARTICLE 41

§ 103D. Limitations on amount of payments for solicitation activities.

(a) A charitable organization other than a charitable salvage organization may not pay or agree to pay as expenses in connection with any fund-raising activity a total amount in excess of 25 percent of the total gross income raised or received by reason of the fund-raising activity. The Secretary of State shall, by rule or regulation in accordance with the "standard of accounting and fiscal reporting for voluntary health and welfare organizations" provide for the reporting of actual cost, and of allocation of expenses, of a charitable organization into those which are in connection with a fund-raising activity and those which are not. The Secretary of State shall issue rules and regulations to permit a charitable organization to pay or agree to pay for expenses in connection with a fund-raising activity more than 25% of its total gross income in those instances where the 25% limitation would effectively prevent the charitable organization from raising contributions.

The 25% limitation in this subsection shall not apply to compensation or expenses paid by a charitable organization to a professional fund-raiser counsel for conducting feasibility studies for the purpose of determining whether or not the charitable organization should undertake a fund-raising activity, such compensation or expenses paid for feasibility studies or preliminary planning not being considered to be expenses paid in connection with a fund-raising activity.

(b) For purposes of this section, the total gross income raised or received shall be adjusted so as not to include contributions received equal to the actual cost to the charitable organization of (1) goods, food, entertainment, or drink sold or provided to the public, nor should these costs be included as fund-raising

costs; (2) the actual postage paid to the United States Postal Service and printing expense in connection with the soliciting of contributions, nor should these costs be included as fund-raising costs.

(c) Every contract or agreement between a professional fund-raiser counsel or a professional solicitor and a charitable organization shall be in writing, and a copy of it shall be filed with the Secretary of State within ten days after it is entered into and prior to any solicitations.

§ 103L. Enforcement of subtitle; penalties.

(a) A charitable organization, professional fund-raiser counsel, or professional solicitor which wilfully fails to file a registration statement, report, or other information with the Secretary of State or wilfully files such a statement, report, or other information which is materially false, or otherwise wilfully violates the requirements of this subtitle, is guilty of a misdemeanor, and, upon conviction, shall be fined not more than $5,000 or sentenced to imprisonment for not more than one year, or be both fined and imprisoned. An officer, director, partner, or trustee of a charitable organization, professional fund-raiser counsel, or professional solicitor which is organized in corporate, partnership, or other organizational form who causes the entity to commit a wilful violation of this subtitle is also guilty of a misdemeanor, and, upon conviction, is subject to the same penalties as the entity.

(b) The Secretary of State is authorized, upon complaint or upon his own motion, to investigate alleged violations of this subtitle. If he finds that a charitable organization, professional fund-raiser counsel, or professional solicitor has violated a provision of this subtitle, he may:

(1) Cancel and annul the registration of the violator;

(2) Refer the matter to the Attorney General for civil enforcement under subsection (c); and

(3) Refer the matter to the appropriate State's attorney for prosecution.

(c) Upon referral by the Secretary of State, the Attorney General may file a civil action in the Circuit Court for Anne Arundel County for an order restraining further violations of this subtitle, restraining the defendant from conducting any further fund-raising activities in Maryland, enforcing compliance with this subtitle, and such other relief as he deems appropriate. As a condition of registration, each charitable organization, professional fund-raiser counsel, and professional solicitor shall consent in writing to the jurisdiction and venue of the Circuit Court for Anne Arundel County to grant appropriate relief.

(d) The Secretary of State shall adopt rules and regulations for the administration and enforcement of this subtitle.

CODE OF MARYLAND REGULATIONS

COMAR 01.02.04.05

.05 Twenty-five Percent Limitation.

A. Calculating Fund-raising Expenses. If an organization confines its solicitation to one or more clearly delineated campaign periods, the 25-percent limitation contained in Article 41, § 103D(a), Annotated Code of Maryland, may be applied retrospectively on an annual basis or on a campaign-by-campaign basis. Under no circumstances, however, may an organization enter into an agreement to pay as expenses in connection with a fund-raising activity a total amount in excess of 25-percent of the total gross income raised or received by reason of the fund-raising activity, except as set forth in Article 41, § 103D(a) and (b), Annotated Code of Maryland, and this regulation.

B. Exceeding the 25-percent Limitation.

(1) The Secretary may permit an organization to exceed the 25-percent limitation contained in

Article 41, § 103D(a), Annotated Code of Maryland, upon a showing that it is necessary to the accomplishment of the organization's charitable purpose and that there is no other reasonable alternative.

(2) Instances in which the 25-percent limitation would effectively prevent an organization from raising contributions, include, but are not limited to, the following situations:

(a) When there are extraordinary, unusual and non-recurring circumstances which can be factually supported; and

(b) When an organization is less than 2 fiscal years old and in the developmental stage.

(3) An organization which expects to exceed or does exceed the 25-percent limitation shall file a request for a waiver with the Secretary on forms provided by him before further engaging in solicitation. The organization shall provide the Secretary with the percentage amount by which it expects to exceed or has exceeded the 25-percent limitation.

(4) If the Secretary denies a request for a waiver of the 25-percent limitation, the organization adversely affected may request a hearing pursuant to COMAR 01.02.03.

C. Disclosure of Waiver of 25-percent Limitation.

(1) As used in this regulation, the terms "gross income" and "fund-raising expenses" are limited as set forth in Article 41, § 103D(a) and (b), Annotated Code of Maryland.

(2) When the Secretary, pursuant to Article 41, § 103D(a), Annotated Code of Maryland, and this regulation, grants a waiver to an organization which expects to exceed the 25-percent limitation, the organization shall disclose to the public the percentage amount authorized by the Secretary to be used for fund-raising expenses. The organization shall print or affix this disclosure by stamp or label on each item of the goods to be sold or publications to be distributed in letters of eight-point type or larger as follows: "The percentage of gross income raised as a result of this

solicitation which may be used for fund-raising expenses may not exceed ____ percent. The Maryland Secretary of State has authorized a waiver of the statutory 25-percent limitation on fund-raising expenses."

(3) When it is not feasible to print or affix this information on each item of goods to be sold, a sign disclosing the information in the form prescribed above shall be printed in block letters at least 1 inch high and conspicuously displayed at each location where the sale of goods occurs.

(4) In the case of telephone solicitation, oral communication, or media solicitation, an organization which:

(a) Expects to exceed the 25-percent limitation shall disclose in each case of solicitation the information prescribed by § C(2), above; or

(b) Does exceed the 25-percent limitation shall disclose in each case of solicitation the information prescribed in § C(5), below.

(5) An organization which exceeds the 25-percent limitation shall include for the next year in all solicitation mailings, publications, and advertisements of any sort, a statement in letters of eight-point type or larger indicating that the limit was exceeded and disclosing the actual percentage of the total gross income raised as a result of fund-raising activities which was used for fund-raising expenses. The statement may indicate that the waiver of the 25-percent limitation on fund-raising expenses was authorized by the Secretary in accordance with the law.

STATEMENT OF THE CASE

A. *The Statute and Regulations at Issue*

The state law under review here, Article 41, Section 103D of the Annotated Code of Maryland, provides for a flexible 25% limitation on a charity's fund-raising expenses. Section 103D does not mandate that a fixed

amount or set percentage be spent by a charity on charitable purposes. Thus, a charity's administrative or other non-charitable expenses are in no way limited. The only expenditures that are in any way limited are certain amounts spent solely on fund-raising.

Moreover, while Section 103D does prohibit a charity from paying or agreeing to pay fund-raising expenses "in excess of 25 percent of the total gross income raised or received by reason of the fund-raising activity," meeting such a requirement, however, is not a condition of securing registration. There is no provision for *prior approval* of contracts between a charitable organization and a professional fund-raiser in Maryland law. A mechanism which so provided was specifically deleted from the 1976 bill which later became Section 103D. *See* Chapter 679, Laws of Maryland 1976.[2] All that remains is a requirement that such contracts be filed with the Secretary of State. Section 103D(c). The only penalties for violating Section 103D are: (1) possible cancellation of registration, Article 41, Section 103L(b); (2) possible civil suit to restrain violators from conducting additional fund-raising, Article 41, Section 103L(c); and (3) a possible criminal misdemeanor prosecution for "willfull" violations, Article 41, Section 103L(a).[3]

The Maryland law also contains major exemptions that further diminish the impact of the 25% restriction. Excluded from fund-raising costs are all costs incurred for goods, food, entertainment, or drinks sold or provided to the public and for postage and printing expenses in

[2] In response to the 1974 Governor's Report concerning abuses in charitable fund-raisers, it was first proposed that a charity's fund-raising expenses be limited to 15% of its gross income. *See* Senate Bill 287, 1975 Session, Maryland General Assembly. This bill was rejected.

[3] Authorization for a civil suit against a professional fund-raiser by the charity was deleted from the 1976 bill. *See*. Ch. 679, Laws of Maryland 1976.

connection with the solicitation. Section 103D(b). In addition, charities are free to pay and professional fund-raisers are free to charge what they want — without any limitation — for "feasibility studies" and "preliminary planning." Section 103D(a).[4]

Most importantly, the Maryland statute provides that:

> The Secretary of State shall issue rules and regulations to permit a charitable organization to pay or agree to pay for expenses in connection with a fund raising activity more than 25% of its total gross income in those instances where the 25% limitation would effectively prevent the charitable organization from raising contributions.

These regulations illustrate the flexibility of the Maryland statute.[5] A charity can choose the applicable period during which the 25 percent limitation is in effect and can apply it retroactively on an annual basis or on a campaign-by-campaign basis. *See* COMAR 01.02.04.05A. The rules place no limit on the type of circumstances justifying relief from the percentage limitation. *See* COMAR 01.02.04.05B. Specifically identified as justifying an exemption is the case where "an organization is less than 2 fiscal years old and in the developmental stage" and "extraordinary, unusual and non-recurring circumstances." An organization can file for an exemption at any time, *including after it actually exceeds the 25 percent limitation*. COMAR 01.02.04.05B(3).

[4] Other liberal features mark Maryland's flexible percentage limitation scheme. For example, the definitions of "contribution" and "professional fund-raiser" are not all-encompassing. Article 41, Section 103A(c) and (h). And charitable salvage organizations, collecting secondhand goods are not subject to the limitation. Article 41, Section 103D(a).

[5] In describing a "trend toward allowing more flexibility in the amount spent for fund-raising," a 1977 study of the National Association of Attorneys General specifically took note of the Maryland statute. *See* NAAG, *State Regulation of Charitable Trusts and Solicitation*, (Aug. 1977) at 31.

Finally, the Maryland law is being administered in a careful fashion with attention being paid to the First Amendment rights of advocacy groups. *See* Annual Report of the Secretary of State (Exhibit A). A 1980 Opinion of the Maryland Attorney General advised the Secretary of State that the 25 percent limitation was not to be considered as an advance requirement for registration; that a charitable organization be given a hearing before any attempt is made to cancel a registration for violation of Section 103D and that the Secretary consider staying such a cancellation attempt pending judicial affirmation. 65 *Opinions of the Attorney General* 58, 61, 64 (1980). Significantly, the Attorney General advised that "the Secretary of State should not hesitate to grant waivers that are based on a responsible showing of justification, especially as regards the public-interest type organization described in the *Schaumburg* opinion." *Id.* at 65.[6] In fiscal year 1982, there were 16 requests for a waiver of the 25 percent limitation with only three denials of the waiver.[7] *Annual Report of the Secretary of State*, (Exhibit A). Waivers were granted by the Secretary approving fund-raising costs in the range of 48 percent to 85 percent. The *Annual Report of the Secretary of State* also shows that over 1,800 organizations filed with that office in fiscal year 1982. (Exhibit A)

These mitigating factors of Section 103D nevertheless do not undercut an important purpose of the statute, viz., to

[6] Although the Respondent in this case admitted overcharges contrary to Section 103D since 1978, the Secretary of State did not take legal or punitive action against it or any of its clients. Section 103D.

[7] While the Secretary's report shows three denials of the waiver, two of the organizations, Howard County Police Officers Association and Anne Arundel County Professional Firefighters Local 1563, submitted additional information and were subsequently granted waivers. Therefore, only one denial of the waiver was final. (Exhibit A)

"assure that contributions will be used to benefit the intended purpose." *See* Preamble to Chapter 679, Laws of Maryland 1976.*

B. *The Proceedings Below.*

On March 7, 1978, the Joseph H. Munson Company, Inc. ("Munson"), a firm incorporated in Indiana, but based in Florida and operating as a professional promoter providing advice to organizations desiring to raise money, filed suit against Maryland's Secretary of State in the Circuit Court for Anne Arundel County, Maryland, seeking a declaration that it was not liable to register as a professional fund-raiser under State law and that Section 103D of Article 41 of the Annotated Code of Maryland was unconstitutional as an unlawful delegation of legislative authority (A. 3). In addition, Munson prayed for injunctive relief against enforcement of these statutes. Specifically, the firm alleged that its activities in Maryland were limited to "advising its clients [various chapters of the Fraternal Order of Police] as to how to go about promoting a particular event" and that it "regularly charged" these chapters a fee in excess of 25 percent of the total gross income of the event (A. 4). Following a motion to dismiss for failure to exhaust administrative remedies, the court dismissed the claims regarding registration of professional fund-raisers but allowed the challenge to Section 103D to continue (A. 13).

The State answered (A. 18) and nothing occurred in the case for nearly two years, until an attempt was made to

* The Preamble of the 1976 Maryland statute also notes that the legislation was a result of news article involving *inter alia* the Pallotine scandal (in which millions of dollars were raised by direct mail, but little used for charitable activities) "alleging that various organizations soliciting funds from the public had excessively high administrative and other expenses, which resulted in a relatively small portion of the contributions collected being used for their intended purpose."

dismiss the suit for want of prosecution. After the suit was allowed to continue, Munson, on May 13, 1980, filed an amended complaint realleging the same factual averments, but also raising for the first time a federal constitutional claim (A. 21). The firm contended that the 25 percent limitation on fund-raising expenses contained in Section 103D "is unconstitutional and in violation of the First and Fourteenth Amendment[s] of the United States Constitution, as it violates the Plaintiff's right to free speech and assembly and unduly intrudes thereon." The State again answered (A. 27) and in an accompanying memorandum questioned Munson's standing to bring its action (A. 29). On June 16, 1980, the case was heard by the Circuit Court on the basis of a five-sentence stipulation which stated that Munson's contract with the Fraternal Order of Police (FOP) called for a fee in excess of 25 percent of the net income raised via the event; that the organization was engaged in the dissemination of information and the advocacy of causes on behalf of police officers and a single chapter of the FOP was "reluctant" to enter into a contract with Munson because of Section 103D (APC 39a). The firm offered no evidence to describe the alleged advocacy action of the FOP or to show a connection between the actual advocacy activities and Munson's dispensation of fund-raising advice or the particular events of individual chapters; or that any other chapter of the organization (allegedly being overcharged for fund-raising services since 1978) had refused Munson's services or was reluctant to engage them; or that any chapter of the FOP had attempted to seek a waiver of the Section 103D limitation or was denied a requested waiver.[9]

[9] On June 4, 1982, Munson filed with the Maryland Secretary of State an application for registration as a "professional fund-raiser counsel." Attached to this application were copies of contracts for fund-raising drives or events it has entered into with the State Lodge of the Fraternal Order of Police and the Baltimore County, Prince George's County, Anne Arundel

On July 2, 1980, the Circuit Court issued its opinion (APC 38a) upholding the challenged statute. Relying upon *National Foundation v. Fort Worth*, 415 F.2d 41 (5th Cir. 1969), *Cert. denied* 396 U.S. 1040 (1970) and distinguishing *Village of Schaumburg v. Citizens for Better Environ.*, 444 U.S. 620 (1980), the Circuit Court held that Section 103D presented no prior restraint on protected activities and, because of the Secretary's power to grant exemptions to the 25 percent limitation, provided "a sufficiently flexible standard" to accommodate First Amendment rights (APC 46A). The court also found no invalid delegation of legislative power.[10] An appeal was taken by Munson to the Court of Special Appeals which affirmed for essentially the same reasons. *Joseph H. Munson Co., v. Secretary of State*, 48 Md. App. 273, 426 A.2d 985 (1981) (APC 23a). The appellate court agreed there was no prior restraint and that the flexible Maryland statute with its many exceptions and provisions for waiver, fit the model of the law upheld in *National Foundation*. In conclusion, the appellate court said:

> We think section 103D regulates First Amendment freedom of speech in such a way as to minimize encroachment upon individual rights while simultaneously protecting the citizenry of this State from sham and fraud. In sum, section 103D is drawn in a

---

County and Montgomery County FOP lodges. Although the June 16, 1980 stipulation in the court case had previously asserted that the latter FOP lodge was "reluctant" to enter into a fund-raising agreement with the firm, the contract with the Montgomery County FOP lodge was dated June 20, 1982 — at a time when two Maryland courts had already rejected Munson's attack on the constitutionality of Section 103D. The agreement with the Montgomery County FOP specified that more than a dozen categories of expenses were to be paid from the gross receipts at the event and that Munson was to receive a fee of 50 percent of the net proceeds remaining after payment of the enumerated expenses. (Exhibit B.)

[10] No mention was made in the Circuit Court opinion of the State's contention regarding standing.

> manner calculated to protect the public interest 'without unnecessarily interfering with First Amendment freedoms.' The statute is constitutional (APC 35a).[11]

Munson petitioned the Court of Appeals of Maryland for certiorari, contending that Section 103D was fatally overbroad on its face in violation of the First Amendment, and for the first time, arguing that in light of the waiver feature of Section 103D "the discretion vested in enforcement officials as a result of the lack of standards is itself an unconstitutional infringement on First Amendment interests." The Secretary of State cross-petitioned on the standing issue. The State's highest court agreed to hear the case and reversed. First, the Court of Appeals concluded that under *Schaumburg* and *Craig v. Boren*, 429 U.S. 190, 193-197 (1976), Munson had standing to challenge the statute on its face (APC 13a). Second, without reference to the legislative history of Section 103D or its implementing regulations or the obvious record of its non-enforcement via a permit scheme, 65 *Opinions of the Attorney General* 58 (1980), the Maryland Court found an impermissible prior restraint (APC 61a-18a). Third, the Court found no difference between the Maryland law and the statute invalidated in *Schaumburg* (APC 16a-21a). In addition, the opinion stated that the waiver feature of Section 103D was "extremely narrow." (APC 20a) Thus, the Court held that Section 103D was violative of the First Amendment as overly broad and invalid on its face. A timely Petition for a Writ of Certiorari was filed with this Court on November 3, 1982, and granted on January 10, 1983, 103 S. Ct. 722 (1983).

---

[11] The Court of Special Appeals declined to consider the State's objection regarding Munson's standing, concluding that the issue had not been decided below. (APC 29a)

SUMMARY OF ARGUMENT

The Court of Appeals of Maryland erroneously concluded that Munson, a professional fund-raiser, had standing to assert the rights of certain charities in challenging the flexible 25 percent limitation on fund-raising expenses contained in Article 41 Section 103D of the Maryland Code; and that on its face Section 103D violated the First Amendment Rights of charitable organizations.

APPLICABLE RULES OF STANDING

To avoid the unnecessary decision of constitutional questions and the adjudication of abstract questions, a plaintiff raising a federal question must assert his own legal rights and interests, not those of third parties. *Warth v. Seldin*, 422 U.S. 490 (1975). These principles control state court treatment of federal questions and should have governed the Maryland court, which claimed reliance on Supreme Court standing decisions and whose own third party standing rules mirror those of this Court. However, the lower court reached out to invalidate on its face and in the abstract the State's percentage limitation on fund-raising expenses and, in particular, its flexible and liberal exception procedure which no Maryland charity has ever found to be a burden.

NO *JUS TERTII* STANDING

An exception to restrictions on third party standing may be found where a substantial business relationship exists between the litigant and third parties whose constitutional rights would be otherwise diluted and impossible to assert. *Singleton v. Wulff*, 428 U.S. 106 (1976). However, this exception does not apply to this case because the mere existence of Section 103D and its generous exception mechanism does not ensure that the rights of Munson's clients will be violated; because the charities — who have suffered no detriment from Section 103D or sought a

waiver of its limitations — are capable of asserting their own rights; and because Munson laid no factual basis for the assertion of *jus tertii* standing.

NO OVERBREADTH STANDING

To prevent chill to First Amendment rights, another exception to third party standing rules arises where a litigant asserts that a statute is facially overbroad. *Eisenstadt v. Baird*, 405 U.S. 438 (1972). Nevertheless, this exception should be sparingly invoked and never employed in a case where conduct as well as speech is involved, unless the overbreadth is "real and substantial". *Broadrick v. Oklahoma*, 413 U.S. 601 (1973). In this case, the exception procedure set forth in Section 103D and the Regulations of the Petitioner obviate any alleged chill to the First Amendment rights of charities. The absence of any facts showing the alleged advocacy activities of Munson's clients, the source of funding for such advocacy, the connection between Munson and such activities, the availability of reasonably priced alternatives to Respondent's overcharges, the effect on Munson's clients of Section 103D and its exception mechanism and the threat of prosecution to either, all lead to the conclusion that no real and substantial overbreadth has been shown. This evidentiary gap and the lack of any prior restraint in the Maryland statute distinguish the standing issue here from that resolved in *Village of Schaumburg v. Citizens for a Better Environ.*, 444 U.S. 620 (1980).

NO BURDEN ON FIRST AMENDMENT RIGHTS

Percentage limitations on a charity's fund-raising expenses are not *per se* invalid. *Larson v. Valente*, 102 S. Ct. 1673 (1982); *Village of Schaumburg v. Citizens for a Better Environ.*, 444 U.S. 620, 635-36 (1980); *National Foundation v. City of Fort Worth*, 415 F.2d 41 (1969), *cert. denied* 396 U.S. 1040 (1970). Only direct and substantial burdens on a charity's First Amendment rights must be justified by

sufficiently strong state interests. Maryland's flexible 25 percent limitation on charitable fund-raising expenses, with its many exemptions, its absence of prior restraint, its generously-administered exception procedure and its lenient treatment of door-to-door solicitation, does not impose a direct and substantial burden on a charity's First Amendment rights. Thus, the Maryland scheme is clearly distinguishable from that struck down in *Schaumburg*.

IMPORTANT INTERESTS SERVED BY § 103D

The Maryland statute serves a vital state interest in protecting the public from fraud by charitable solicitors and, in line with contributors' expectations, insuring that funds solicited from the public for one purpose will not be diverted for other purposes. Unlike the ordinance invalidated in *Schaumburg*, the Maryland statute is a comprehensive law less burdensome than other measures whose purposes are not served merely in a peripheral manner. In addition, Maryland's percentage limitations scheme also protects the charities themselves from being overcharged by unscrupulous professional fund-raisers.

ARGUMENT

I.

A PROFESSIONAL FUND-RAISER, SUCH AS MUNSON, LACKS STANDING TO BRING A FACIAL CHALLENGE TO MARYLAND'S FLEXIBLE LIMITATION ON FUND-RAISING COSTS AND TO ASSERT THE ALLEGED FIRST AMENDMENT RIGHTS OF CHARITIES.

Munson is neither a charity nor an advocate of issues meriting First Amendment protection. Respondent is a non-resident business — a professional fund-raiser — attempting to earn money from Maryland charities and other organizations. As to it, the percentage limitation contained in Section 103D of Article 41 of the Maryland Code is mere economic regulation that might control the fees the firm charges. Clearly, if Munson were simply

asserting its own rights, its facial First Amendment challenge would have to fail. It must seek to assert alleged First Amendment rights of charities to have even the hope of a meritorious claim.

The Court of Appeals of Maryland rejected Petitioner's attack on Munson's standing and held as a matter of federal law that the firm could assert the First Amendment rights of charities on two independent theories: (1) Section 103D was directed at persons with whom Munson had a business or professional relationship and impaired that relationship; and (2) Section 103D could be challenged on its face as substantially abridging the First Amendment rights of charities. (APC 11a-13a). To reach these conclusions, the Maryland court relied on *Village of Schaumburg v. Citizens for Better Environ.*, 444 U.S. 620 (1980) and *Craig v. Boren*, 429 U.S. 190 (1976), as well as other decisions of this Court. (APC 12a). The State contends that these cases do not support Munson's right to assert the claimed First Amendment rights of its charity-clients and that to adopt the views of the lower court in light of the record in this case would substantially erode both the standards and the rationale set forth in this Court's decisions on third party standing.[12]

[12] Petitioner does not here press the argument that Munson has not shown "injury in fact," *Singleton v. Wulff*, 428 U.S. 106, 112 (1976), even though the nature of Respondent's injury for purposes of a facial attack on the statute is somewhat indirect and conjectural. See *Warth v. Seldin*, 422 U.S. 490, 504-505 (1975). The mere existence of § 103D does not automatically result in economic loss for a professional fund-raiser desiring to charge fees in excess of 25 percent of gross income. A charity could request and obtain an exception to exceed the limitation. In addition, there is little, if any, justification for Munson's assertion that his clients were reluctant to contract with the firm. Munson had been contracting for fees in excess of 25 percent during the entire four and one-half year period this litigation was pending in the Maryland courts. See page 12, *supra*. In fact, the very FOP chapter whose alleged reluctance

A plaintiff raising a federal question must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights and interests of third parties. *Warth v. Seldin*, 422 U.S. 490, 500 (1975). Without such prudential limitations, "courts would be called upon to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions and even though judicial intervention may be unnecessary to protect individual rights." *Id.* at 501. Moreover, the holders of those rights may "not wish to assert them, or will be able to enjoy them regardless of whether the in-court litigant is successful or not," *Singleton v. Wulff*, 428 U.S. 106, 114 (1976), and, in any event, the "third parties themselves usually will be the best proponents of their own rights." *Id.*

This case points up the necessity for these wise principles. After hearing the argument of a professional fundraiser, the Maryland court suggested that the exemption feature of Section 103D on its face conferred too much discretion on State officials yet was too "narrow" to preserve the First Amendment rights of charities. (ACP 20a). However, a charity, which itself could apply for an exception from the percentage limitation, would be in the best position to know and to litigate whether it needed

---

to deal with Munson the Court of Appeals of Maryland highlighted in its August 5, 1982 opinion (APC 11a), had contracted with Munson at an excessive fee six months previously. See N. 9, *supra*, and Exhibit B. A charity's ability to obtain an exception to the 25 percent limitation and the above record of nonenforcement of the statute against Munson undercut its assertion that it faced a genuine threat of prosecution. The State denied it had ever made such a threat (A. 28) and Munson never offered any evidence on the point. However, because *in a given case* Munson could *possibly* be subject to the penalties of § 103L and because Munson would face a *possible* economic loss if an overcharged charity were denied an exception, Petitioner does not make an issue of "injury in fact" standing.

more protection from the Secretary than the fund-raiser or whether it was necessary to assert its First Amendment rights in the first place. For example, in 1980-82, five lodges of the Fraternal Order of Police requested exemptions ranging from 65 percent to 83 percent; *all* were granted. See Exhibit A. If Munson's clients — other FOP lodges — had bothered to apply for an exemption, they might not have needed Respondent's litigation.

It is also clear that state courts, just like federal courts, are bound to follow these prudential standing rules when deciding federal questions. Although some maintain that these limitations were developed "by the Supreme Court in its supervisory capacity over the federal judiciary," *Tax Analysts and Advocates v. Blumenthal*, 566 F.2d 130, 137 (D.C., *cert denied* 438 U.S. 1036 (1977)) and Professor Tribe has urged no federal limits on State standing rules, L. Tribe, *American Constitutional Law*, § 3-18 (1978),[13] decisions of this Court on third party standing have drawn no distinction between State and federal courts. See *e.g.*, *Griswold v. Connecticut*, 381 U.S. 479 (1965) and *Barrows v. Jackson*, U.S. 249 (1953) *reh'g denied*, 346 U.S. 841 (1953). This Court has raised third party standing issues not even addressed by the State courts whose judgments were under review. *See McGowan v. Maryland*, 366 U.S. 420 (1961) and *Tileston v. Ullman*, 318 U.S. 44 (1943). And just two years ago, this Court held that a State court erred in permitting an immature and unemancipated girl to challenge the constitutionality of a statute requiring parental notification of the child's abortion, as applied to girls who are mature and emancipated. *H. L. v. Matheson*, 450 U.S. 398 (1981).

[13] But see, *Supreme Court and Supreme Law* (E. Cahn Ed.) 35 (1954).

There are additional cogent reasons for requiring the Maryland court in this case to comply with federal standing rules. First, the Court of Appeals of Maryland concluded that standing existed *solely* on the basis of its reading of Supreme Court decisions. It "felt compelled by what it understood to be federal constitutional considerations" to apply the standing rules the way it did. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). It was not carving out a new State rule on third party standing. In addition, even when adjudicating in their own sphere, Maryland courts apply the very same restrictive rules on third party standing articulated by this Court. See e.g. *Clark v. State*, 284 Md. 260, 264-5, 396 A.2d 243 *cert denied*, 444 U.S. 858 (1979); *Brown v. State*, 177 Md. 321, 9 A.2d 209 (1939); *In re William G.*, 52 Md. App. 131, 447 A.2d 493 (1982); Rees, *State Constitutional Law for Maryland Lawyers: Judicial Relief for Violations of Rights*, 10 U. Balto. L. Rev. 102, 119 (1980). For all of these reasons, this Court should not hesitate to apply its third party standing rules to this case.

A.

The Business Relationship Between Munson and Its Clients Does Not Warrant Liberalized Standing In This Case.

One exception to the rule that a person may not challenge the constitutionality of a statute as applied to third parties may arise when a litigant claims that a single application of a law both injures him and others [hereinafter referred to as *jus tertii* standing]. See Note: *Standing to Assert Constitutional Jus Tertii*, 88 Harv. L. Rev. 423, 424 (1974).

Where *jus tertii* standing is alleged, this Court has generally focused on three factual elements to determine whether such standing should be accorded: (1) the presence of some substantial relationship between the litigant

and third parties; (2) the impossibility of the third parties asserting their own constitutional rights; and (3) the need to avoid a dilution of third party rights that would result were the assertion of *jus tertii* not permitted. *Singleton v. Wulff*, 428 U.S. 106, 114-116 (1976); Note: *Standing to Assert Constitutional Jus Tertii*, 88 Harv. L. Rev. 423, 425 (1974). Whether these factors are considered individually or together, they do not support Munson's standing to assert the rights of charities.

It is true that Munson has a business relationship with certain groups deemed charities under Maryland law, see Md. Code, Art. 41, § 103A(b) and that a major thrust of Section 103D is aimed at the charities themselves. However, the mere existence of Section 103D does not "ensure" that the rights of Munson's clients will be violated. See *Craig v. Boren*, 429 U.S. 190, 195 (1976).[14] Here, the charities could seek and obtain an exception from the 25 percent limitation, thereby obviating any possible impact on their First Amendment rights or any penalties under the statute. The constitutional rights of the charities are not so inextricably bound up with Munson's activities that they will be automatically diluted if the firm's facial challenge to Section 103D fails. See *Singleton v. Wulff*, *supra*, 428 U.S. at 114-115.

Even if the relationship between Munson and its clients were extremely close, "the reasons for requiring persons to assert their own rights will generally apply" unless the charities lack the ability to assert their own rights. *Id.* That is clearly not the case here. There is no reason to believe that the organizations themselves, which have neither suffered detriment from Section 103D nor sought a waiver of its provisions, will have their rights diluted or

[14] In *Craig v. Boren*, *supra*, the punishment of vendors for selling 3.2% beer to underaged males guaranteed that the latters' equal protection rights would be denied.

will be precluded from challenging the statute should the need ever arise.

Finally, *jus tertii* standing requires *factual* predicates (*Singleton v. Wulff, supra*, 428 U.S. at 115-116) not present in this facial challenge to the Maryland statute. For example, there is no factual connection between Munson's services and the advocacy interests of its clients or any demonstration that the organizations will not be able to obtain the same services from others at a fee permitted under Section 103D.

For these reasons, the lower court erred when it held Munson entitled to *jus tertii* standing.

B.

THE FIRST AMENDMENT OVERBREADTH DOCTRINE DOES NOT CONFER STANDING ON MUNSON TO ASSERT THE RIGHTS OF ITS CLEINTS.

In certain First Amendment cases, a facial challenge to a statute on behalf of third parties may be permitted by one whose conduct could be constitutionally proscribed. See *Eisenstadt v. Baird*, 405 U.S. 438 (1972). The important purpose served by such a rule is to protect against the "chill" to the First Amendment right of third parties. *Craig v. Boren, supra*, 429 U.S. at 195 n.4.

Nevertheless, in *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973), this Court said that liberalized standing in First Amendment overbreadth cases is "strong medicine" and has been employed "sparingly and only as a last resort." And in *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 216 (1975), it was said that when considering a facial challenge, "it is necessary to proceed with caution and restraint, as invalidation may result in unnecessary interference with a state regulatory program." It is for this reason that this Court has said that in cases like the

present one, where conduct and not merely speech is involved, "the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Broadrick v. Oklahoma, supra,* 413 U.S. at 615.[15]

The State contends that in light of the record in this case no "substantial" First Amendment overbreadth has been shown to exist as a result of the mere existence of Section 103D.

First, the flexible percentage limitation in Maryland's law could not on its face be said to "chill" the First Amendment rights of charities. They can quite easily apply for an exception to the percentage limitation and probably obtain one, for such exceptions have been freely granted. See Exhibit A.

Second, the sparse record in this case does not identify any of the alleged "advocacy" activities of Munson's clients,[16] whether they were funded by charity events or the dues paid by FOP members,[17] whether Munson's services had anything to do with the alleged advocacy

[15] Even if there are marginal applications in which a statute would infringe on First Amendment values, facial invalidation is inappropriate if there are "a substantial number of situations to which it might be validly applied." *Parker v. Levy,* 417 U.S. 733, 760 (1974).

[16] It is by no means clear that the *principal* activity of Munson's clients is the engaging in First Amendment protected advocacy. A Florida court recently held that FOP chapters like those groups that were Munson's clients did not engage in substantial First Amendment activities. See *Fraternal Order of Police v. Department of State,* 392 So. 2d 1296, 1301 (Fla. 1980) ("The trial court also concluded that appellants' rights of free speech were not violated because the primary activities of the organizations regulated by the statute did not involve activities protected by the first amendment.")

[17] Bona fide membership dues do not constitute "contributions" under the State's regulatory scheme. See Md. Code 41, § 103A(c).

activities, or whether chapters of the FOP could conveniently obtain such services elsewhere at a 25 percent fee. What is clear is that neither Munson or its clients was threatened with prosecution, that no client was deterred from contracting with Munson for a fee in excess of that specified in Section 103D, that Munson's clients never bothered to seek an exception from the percentage limitation and that exceptions were freely granted by the State. Clearly, Munson has failed to show the real and substantial overbreadth necessary to assert this facial challenge on behalf of his clients.

This is in marked contrast to the record in *Village of Schaumburg v. Citizens for a Better Environ., supra.* The *Schaumburg* ordinance was challenged by an advocacy group that had established a relationship between its advocacy and its fund-raising and that was effectively put out of business by an inflexible ceiling on all non-charitable expenditures. *Id.* at 626.

Moreover, *Schaumburg* quite properly reflected a desire to accord liberalized standing where protected speech or conduct fell victim to the power of the censor. *See Thornhill v. Alabama,* 310 U.S. 88, 97 (1940) ("It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of expression.") However, "overbreadth scrutiny has generally been somewhat less rigid in the context of statutes regulating conduct in the shadow of the First Amendment, but doing so in a neutral, noncensorial manner." *Broadrick v. Oklahoma, supra,* at 614-15. **The Maryland statute and implementing regulations which allow a group to obtain a waiver of the 25 percent fund-raising limitation ever *after* that limit has been exceeded, COMAR 01.02.04.05B(3), clearly do not reveal the hand of the censor.**

For these reasons, the State submits that the Maryland Court erred when it concluded that Munson had standing to assert the alleged First Amendment rights of charities.

II.

A PERCENTAGE LIMITATION ON FUND-RAISING COSTS OF CHARITIES, WHICH INVOLVES NO PRIOR RESTRAINT AND IS BOTH FLEXIBLE AND MODERATE DOES NOT VIOLATE THE FIRST AMENDMENT.

The court below held Maryland's 25 percent limitation on a charity's fund-raising expenses — a limitation which is not only modest but also flexible — "invalid under the First Amendment of the United States Constitution." 448 A.2d at 947. To reach this holding the Maryland court created a *per se* rule that would effectively invalidate any percentage limitation in a charitable solicitation law. Such a rule is unsanctioned. This Court has never held that such percentage limitations are *per se* or intrinsically invalid. Indeed, in *Schaumburg*, the Court indicated to the contrary by distinguishing the absolute and unrealistic ceiling on a charity's operations which it struck down in that case, from the flexible percentage ceiling on solicitation expenses upheld in *National Foundation v. City of Fort Worth, supra*. And more recently in *Larson v. Valente, supra*, the Court again noted that evenhanded state regulation of charitable solicitation, including a provision for withdrawing the registration of an organization spending "an unreasonable amount" for management, general and fund-raising costs, was not "intrinsically impermissible." ___ U.S. at ___, 102 S. Ct. 1688.[18]

[18] Undoubtedly, it is because of this implicit approval of percentage limitations, and because of the simplicity and ease of administration afforded by such limitations, that many states

Rather than holding percentage limitations *per se* invalid, this Court has directed that each such regulation be carefully examined to determine if it regulates "solicitation in such a manner as not unduly to intrude upon the rights of free speech." *Village of Schaumburg v. Citizens for Better Environ.*, 444 U.S. 633. Further, the Court has specifically outlined the method for making this determination. First, the amount of the burden imposed on the protected activity by the challenged regulation must be ascertained. When the regulation imposes no substantial burden, no further constitutional analysis is necessary; the regulation must be sustained. If, but only if, the regulation imposes a "direct and substantial" burden on protected activity, it must then be determined what interest the regulation serves. *Id.* at 636. If it serves a "sufficiently strong interest" then it still must "be sustained." *Id.* at 636.

This sort of constitutional analysis, that is, examining first the character of the burden and then, only if that burden is excessive or severe, requiring its justification, is one which this Court has applied repeatedly in First Amendment cases. See *e.g. Clements v. Fashing*, ___ U.S. ___, 102 S. Ct. 2836, 2848 (1982) *reh'g denied*, 103 S. Ct.

---

have employed them to protect the contributing public and charitable beneficiaries from fraud and the charities themselves from the unscrupulous practices of professional fund raisers. In fact, model state legislation to regulate charitable organizations proposed by thirteen national health charities, *suggests* a reasonable percentage limitation on fees paid professional fund raisers. See National Health Council, *Model for State Legislation Regulating Charitable Organizations* (1970). Moreover, twenty-one (21) states have established percentage limitations of varying degrees of flexibility and severity on the amounts a charity may pay to professional fund raisers or on those sums paid for solicitation and administration costs. See Petition for Certiorari at fn 8. Many states impose more difficult requirements than that contained in the Maryland statute. See, *e.g.* Mass. Gen. Laws Ann. Ch. 68, § 21; N.H. Rev. Stat. Ann. § 320.20; Okla. Stat., Tit. 18, § 5523.

20 ("burden" on First Amendment interests so "insignificant" that statute must be upheld; constitutional limitations arise "only . . . if the challenged provision significantly impairs interests protected by the First Amendment"); *Storer v. Brown*, 415 U.S. 724, 726, 738 (1974); *cf. Bullock v. Carter*, 405 U.S. 134, 143 (1972) ("[N]ot every limitation or incidental burden on the exercise of voting rights is subject to a stringent standard of review"). In *Schaumburg*, the application of this analysis led to the invalidation of the challenged ordinance. However, this was so only because: (1) the burden caused by the ordinance was found to be "direct and substantial," *and* (2) the interests justifying the ordinance, although recognized as legitimate, were held not to be "sufficiently strong." Here, in contrast, this analysis requires that the challenged regulation be sustained on both counts.[19] The Maryland law imposes no direct or substantial burden on protected activity. And, secondly, in any event, it must be sustained because it furthers strong, indeed vital, State interests.

A.

Section 103D Imposes No Direct Or Substantial Burden On Protected Activity

The very limited, moderate nature of the Maryland statute at issue here is perhaps most easily seen by comparing it with the statute condemned in *Schaumburg*.

---

[19] Of course, as applied to Respondent, not itself a charity, but an out-of-state professional fund raiser in the *business* of providing advice to organizations desiring to raise money, no examination of burden or justification is necessary. For this Court has long recognized that "states have power to legislate against what are found to be injurious practices in their *internal commercial and business* so long as their laws do not run afoot of some specific federal constitutional prohibition." See *e.g., North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.*,

As the Respondent concedes, Section 103D imposes no prior restraint on protected activities. Brief of Respondent in Opposition to Petition for Writ of Certiorari at 3.[20] While the *Schaumburg* ordinance required every charitable organization soliciting funds door-to-door to apply for a permit *"prior* to such solicitation" *id.* at 829, the Maryland statute requires no permit, while requiring door-to-door solicitors to register as other charities do, it does not single out door-to-door solicitors and impose special burdens on any of them. Moreover, compliance with Section 103D is not a requirement for registration. *Compare Schaumburg Village Code* Section 22-20 which provided that a charity *when* applying for a permit must demonstrate "satisfactory proof" of compliance with the 75-percent requirment including "a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five percent of the funds collected are utilized directly and solely for the charitable purpose of the organization." 444 U.S. at 684 n. 4.

Maryland's Secretary of State has not only never administered Section 103D as a condition precedent to registration but rather she has been specifically advised not to do so. 65 *Opinions of the Attorney General* 58, 61, 64 (1980). Indeed, the regulations of the Secretary permit a

---

(Douglas, J.) 414 U.S. 156, 165 (requiring application for permit to operate a pharmacy to be a registered pharmacist well within a state's authority to legislate against what it found to be injurious practices in its business affairs); *Ferguson v. Skrupa*, 372 U.S. 726, 730, (statute requiring one engaging in business of debt collecting to be a lawyer similarly upheld).

[20] Although the trial court and Maryland's intermediate appellate court so held, *Munson v. Secretary of State*, 48 Md. App. 273, 426 A.2d 985 (1981), the Maryland Court of Appeals, ignoring the features of § 103D described in text, erroneously concluded that it did constitute a prior restraint. 448 A.2d at 944-45.

person to apply for an exemption from the 25 percent limitation *even after Section 103D has been violated.* Because Section 103D is not a prior restraint it does not come to this Court "bearing the heavy presumption against its constitutional validity," *Southeastern Promotions Ltd. v. Conrad,* 420 U.S. 546, 558 (1975) that any prior restraint — including that in *Schaumburg* — has:

> "The presumption against *prior* restraints is *heavier* — and the degree of protection broader than that on limits on expression imposed by criminal penalties." *Id.*

For this reason alone, whatever the burden § 103D imposes on protected activity it is both far less direct and far less substantial than that imposed by the *Schaumburg* ordinance.

However, this is not the only respect in which the "burden" imposed by Maryland law is far less than that of the *Schaumburg* ordinance. The *Schaumburg* ordinance provided not only that a permit is required prior to any door-to-door charitable solicitation, but also that "a license *must* be denied to anyone 'who is not found to be a person of good character and reputation,'" (emphasis added) 444 U.S. at 622 and could be revoked if the village manager finds the solicitor "ceases to possess good character," 444 U.S. at 622. The Maryland statute does not condition registration on a subjective determination of "moral character" or allow loss of registration because of a judgment as to "moral character."

Moreover, Section 103D, unlike the *Schaumburg* ordinance, restricts only fund-raising expenses *not* all non-charity related expenditures. In fact, in *Schaumburg*, the charity in question spent less than 25 percent of its income on fund-raising (but considerably more on administrative costs) and would not have encountered a problem under Maryland law. 444 U.S. at 626. Indeed, because such a

large amount of a charity's costs are often non-fund-raising administrative expenses, Maryland's statute is less burdensome than that implicitly approved by this Court in *Larson v. Valente, supra* (the regulation in *Valente* contained a 30 percent limitation on *"management, general and* fund-raising costs," as compared with Maryland's 25 percent limitation only on fund-raising costs.) In addition, Section 103D contains significant exemptions that further mitigate the effect of the percentage limitation. See page, 8 *supra*.

While the *Schaumburg* ordinance specified no circumstances or conditions under which the percentage limitation could be waived, Section 103D clearly does. In fact, it constitutes precisely the kind of *flexible* limitation reviewed by this Court in *National Foundation v. Fort Worth*, 415 F.2d 41 (5th Cir. 1969), *cert. denied* 396 U.S. 1040 (1970) and endorsed in *Schaumburg:*

> "Unlike the ordinance upheld in *National Foundation v. Fort Worth*, 415 F.2d 41 (CA 5 1969), *cert. denied*, 396 U.S. 1040, 90 S. Ct. 688, 24 L. Ed. 2d 684 (1970), the [Schaumburg] village ordinance has no provision permitting an organization unable to comply with the 75-percent requirement to obtain a permit by demonstrating that its solicitation costs are nevertheless reasonable. Moreover, because compliance with the 75-percent requirement depends on organizations' receipts and expenses during the previous year, there appears to be no way an organization can alter its spending patterns to comply with the ordinance in the short run. Thus, the village ordinance effectively bars all in-person solicitation by organizations who spent more than one-quarter of their receipts in the previous year on salaries and administrative expenses." **444 U.S. at 636 n. 9.**

Thus, the Court found the *Schaumburg* ordinance lacked necessary flexibility in two respects. First, it did not provide an organization unable to meet the percentage limitation with an opportunity to demonstrate its solicita-

the *Schaumburg* 75 percent requirement was always based upon an organization's previous year receipts and expenditures, the organization could not alter its "spending patterns to comply with the ordinance in the short run." *Id.*

The Maryland statute provides both aspects of the flexibility so lacking in the *Schaumburg* ordinance. First, it specifically directs the Secretary of State to:

> ". . . issue rules and regulations to permit a charitable organization to pay or agree to pay for expenses in connection with a fund-raising activity more than 25% of its total gross income in those instances where the 25% limitation would effectively prevent the charitable organization from raising contributions." § 103D(a).

Pursuant to this directive, the Secretary of State has issued such regulations, providing that the percentage limitation may be waived "upon a showing that it [the exemption] is necessary to the accomplishment of the organization's charitable purpose and that there is no other reasonable alternative." COMAR 01.02.04.05 B (1). Accordingly, an organization is provided with precisely the opportunity to demonstrate its solicitation costs are reasonable that was missing in the *Schaumburg* ordinance.[21] Moreover, a charity can choose the period in which the percentage limitation is in effect and apply it retrospectively on an "annual basis *or* on a campaign-by-campaign basis." COMAR 01.02.04.05A. (Emphasis added) In this way Maryland law affords the charity an opportunity to "alter" its "spending patterns," and thus provides the other important flexible feature found absent in *Schaumburg*.

---

[21] This elasticity also seems to be lacking in the Minnesota statute implicitly *approved* by the Court in *Larson v. Valente*, 102 S. Ct. at 1685 and 1688.

The Respondent, in the court below, argued that the Maryland law permitted only a very narrow waiver of the 25 percent limitation. In fact, we submit the regulations provide no limit on the circumstances justifying waiver and have been employed by the Secretary in an extremely liberal manner, with special care shown for the rights of advocacy groups. See 65 *Opinions of the Attorney General* 58 (1980). More than 90 percent of the requested waivers have been granted. *Annual Report of the Secretary of State* (Exhibit A). Fifteen waivers, allowing fund-raising costs averaging more than 75 percent, have been permitted. *Id.* In fact only one waiver has been denied and that organization failed to supply the additional information requested by the Secretary. *Id.; infra* n. 7. Waivers have been permitted for a variety of reasons including an organization's statement that it is incapable of effectively conducting a fund-raising campaign, lacks fund-raising experience or time, had been unsuccessful in past fund-raising of organization or wishes to establish a building fund. *Id.*

Indeed the flexibility provided by Section 103D — a flexibility which experience demonstrates has been employed to waive the 25 percent limitation on fund-raising expenses whenever necessary — makes the challenged regulation far less burdensome than a comprehensive[22] disclosure requirment would be. This Court in *Schaumburg* suggested that disclosure would "assist in preventing fraud" 444 U.S. at 638; however, in order to effectively do this, a disclosure statute would clearly have to be both very comprehensive and readily available to the public. This Court has "long recognized" that such comprehensive disclosure requirements, while they may be justified,

[22] Maryland law requires *limited* disclosure if a charity is granted a waiver of the limitation on "fund-raising" activities. In such cases, the charity must disclose to the public the percentage of gross income authorized by the Secretary of State to be used on "fund-raising" expenses. COMAR 01.02.04.05C(2).

constitute "significant encroachments of First Amendment rights." *Buckley v. Valeo*, 424 U.S. 1, 64 (1976); *Grason v. Florida Legislative Committee*, 372 U.S. 539, 546 (1963); *Bates v. Little Rock*, 361 U.S. 516, 80 S. Ct. 412 (1960); *NAACP v. Alabama*, 357 U.S. 449, 463 (1958). See also *Brown v. Socialist Workers '74 Campaign Comm*, ___ U.S. ___, 103 S. Ct. 416 (1982). Comparison of Section 103D with the statutes compelling massive disclosure which have been upheld by this Court, see *e.g., Buckley v. Valeo*, 424 U.S. at 84; *California Bankers Ass'n. v. Shultz*, 416 U.S. 21, 94 S. Ct. 1494 (1974), compels the conclusion that the comparative burden of Section 103D is miniscule.

In summary, Maryland's moderate flexible percentage limitation, which involves no prior restraint, constitutes far less burden than the statute condemned in *Schaumburg* or, indeed, even an effective disclosure requirement. Accordingly, it should be sustained.

B.

SECTION 103D FURTHERS VITAL STATE INTERESTS

The justification, for whatever burden Maryland's moderate, flexible percentage ceiling on solicitation expenses imposes is obvious and demonstable. In fact, the *Schaumburg* Court specifically recognized that a governmental body has "indeed, substantial" interests in protecting the public from fraud by charitable solicitors. 444 U.S. at 836. See also *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640 (1981) ("the State has a significant interest in protecting its fairgoers from fraudulent or deceptive solicitation practices" which "is substantially furthered by a Rule that restricts sales and solicitation activities to fixed booth locations, where the State will have the greatest opportunity to police and prevent possible deceptive practices. . . .") (Brennan, J. with whom Marshall, J. and Stevens, J. join) (concurring in part and dissenting in part). This is hardly surprising

since it is well established that a reasonable regulation of charitable organizations is well within a government's police power:

> "Without doubt, a state may protect its citizens from fraudulent solicitations by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity, his authority to act for the cause which he reports to represent. The state is likewise due to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort and convenience." *Cantwell v. Connecticut,* 310 U.S. 296, 306 (1940).

Everyone recognizes that charities have some program managemant and fund-raising expenses, however, contributions are made to charitable organizations primarily to support the organization's worthy activities and purposes. Accordingly, the state clearly has a strong interest in ensuring that funds solicited from the public for one purpose will not be diverted for other purposes. Thus, in line with contributors' expectations that their contributions will go primarily to the charitable purpose, these fund-raising costs should be moderate.[23] Section 103D's moderate flexible limitation on fund-raising expenses assures this, protecting donors and donees as well as promoting the public's perception of integrity and efficiency with which charitable funds are raised.

---

[23] It is worth noting that two national organizations representing charities have, themselves, suggested percentage limitations on fund-raising expenses. The National Information Bureau suggests that at least 70% of all available contributed funds should be spent for *program activities*, that is, only 30% may be spent for fund-raising, *NIB Standards in Philanthropy* (1982), the Philantropic Advisory Service, Counsel of the Better Business Bureau, suggests that no more than 35% of total fund-raising expenses should be allocated to fund-raising. The Council of Better Business Bureaus' *Standards For Charitable Solicitations* (1982).

The only reason the *Schaumburg* Court found that this "substantial" governmental interest was unable to support even a far more burdensome regulation than that at issue here, was because it found that interest was "only peripherally promoted" by the ordinance and "could be sufficiently served by measures less destructive of First Amendment interests." 444 U.S. at 636. In the case at hand, as demonstrated above, the challenged regulation is clearly less "destructive" or burdensome on First Amendment rights. Moreover, and just as significantly, it promotes the substantial interests in a comprehensive rather than "peripheral" manner.

Although the *Schaumburg* ordinance burdened door-to-door solicitators with an inflexible prior restraint, requiring them to obtain a permit prior to soliciting, a permit which would not be issued unless the organization spent at least 75 percent of its total gross income on charitable purposes, it did not in any way even attempt to regulate any other sort of charitable solicitors. In contrast, the Maryland statute, while imposing no prior restraint, nor inflexible limitation on non-charitable expenses, does regulate all charitable fund-raising, *not just* door-to-door solicitors. Thus, on the one hand, Maryland's law does not attempt to single out for heavy regulation possibly speech-laden door-to-door solicitation, which this Court has recognized as the "most effective way of bringing [a matter] to the notice of individuals," *Schneider v. State*, 308 U.S. 147, 164 (1939), and "essential to the poorly financed causes of little people." *Martin v. Struthers*, 319 U.S. 141, 146 (1943). On the other hand, the statute challenged here is neutral and non-discriminatory and does reach all possible charity frauds.

This is significant because the need for state regulation of fund-raising activities has increased in the last few years because of two factors which have nothing to do with whether or not the charity is engaged in door-to-door

solicitation. The most important of these is the dramatic rise in the sums of money collected by charities from the public together with the emergence of charity rackets which result in the diversion of huge sums of money.[24] In addition, fund-raising which had been largely unpaid volunteer activity in the past has become one of this country's largest businesses, carried on by professional fund-raisers paid with a percentage of the funds collected.[25] Contracts between charitable organizations and charitable fund-raisers are thus not merely bilateral, rather they establish a triangular relationship with the public as a third party whose interests must be protected. While the *Schaumburg* ordinance did not even attempt to regulate the majority of charitable fund-raisers, and so only peripherally promoted the state's interest, Section 103D regulates all, in a moderate flexible manner, and so thoroughly, but carefully, furthers the state's strong interests in preventing fraud by charitable organizations.

Moreover, Maryland's flexible percentage limitations on solicitation expenses serves another interest not even asserted in *Schaumburg*. That is, it protects charities themselves from unscrupulous professional fund-raisers. Nothing is more corrosive of public confidence in charitable *giving* and thus more harmful to the charities themselves, than fund-raising schemes where for-profit

---

[24] In 1981 a record $53.6 billion in charitable contributions was made with individuals contributing $44.5 billion or 83% of the total. According to statistics published by the National Information Bureau, contributor's dollars (not counting gifts to religion) had a $28.7 billion impact on our society in 1981.

[25] Nationally it was estimated several years ago that at least one percent of the billions contributed annually ends up in the pockets of fraudulent fund-raisers. *See* Note, *Charitable Solicitation Acts. An Attempt to Curb Charity Cheats*, 16 DePaul L. Rev. 472 (1967).

solicitors receive the bulk of charitable donations.[*] The lure of no-risk percentage fund-raising can easily induce a charity to sell its most valuable asset — its good name and its charitable appeal — to a professional solicitor without making a reasonable financial decision. To the charity, this is new found money without any effort on the part of the charity or risk. The conduct of trustees and directors of charitable organizations is not subject to the traditional profit and loss constraints of the market place or the scrutiny of shareholders and investors. Charitable solicitations present special opportunities for abuse. Most importantly, the direct and ultimate beneficiaries of charities — the poor, the disadvantaged, the handicapped and the general public — often are incapable of protecting their own interests. Maryland's flexible moderate limitation solely on fund-raising expenses is designed to meet the problem posed by unprincipled unscrupulous charity promoters while not unduly burdening the charity itself.

In summary, the challenged statute furthers what this Court in *Schaumburg* recognized as "substantial" state interests — the protection of the public from fraud by charities. Moreover, rather than only "peripherally" serving those interests, as the *Schaumburg* ordinance did, it serves them in a comprehensive manner. Section 103D is clearly aimed at the non-speech elements of charitable solicitation and is being administered in a neutral, non-censorial manner with special regard for the few charities that advocate issues. And, it is significantly less

---

[*] There is some evidence that the unscrupulous practices of fund-raisers fall heavy on law enforcement organizations such as the charities whose rights are purportedly asserted in this case. For example, a court in Florida (where Munson is based) held that a state legislature could rationally conclude that abuse by solicitors collecting funds for law-enforcement organizations was greater than from solicitors for other organizations. *Fraternal Order of Police v. Dept. of State*, 392 So. 2d 1296 (Fla. 1980).

burdensome than other types of charitable regulation.[27] Furthermore, Maryland law serves an additional interest, not reached by the *Schaumburg* ordinance, *i.e.* it protects charities themselves from exhorbitant fees from professional fund-raisers. Since the Maryland statute furthers substantial state interests in a comprehensive, rather than peripheral matter, without directly or substantially burdening protected activity it should be upheld.

[27] The flexible percentage limitation contained in Section 103D is not as stringent as an across-the-board disclosure requirement. See page 33, *supra*. Nor is it as burdensome as the requirements of prior approval of fund-raising contracts, which provision was striken from the original bill that became Section 103D. Finally, a "flexible" limitation such as Section 103D, to which an exception may be sought even after the 25% ceiling has been violated, is in no way comparable to a strict criminal penalty.

CONCLUSION

The lower court impermissibly accorded Respondent standing to assert the rights of charities and struck down as facially violative of the First Amendment a reasonable regulation, that the record demonstrates, would have to be upheld even if challenged as applied. For these reasons, the decision of the Court of Appeals should be reversed with instructions to remand for dismissal of Munson's action or, in the alternative, for the entry of a declaration decreeing that Section 103D of Article 41 of the Maryland Code is constitutional and not violative of the First Amendment.

Respectfully submitted,

STEPHEN H. SACHS,
Attorney General of Maryland,

DIANA G. MOTZ,
JAMES G. KLAIR,
Assistant Attorneys General,

ROBERT A. ZARNOCH,
Assistant Attorney General,
Counsel of Record,

Seven North Calvert Street,
Baltimore, Maryland 21202,
(301) 576-6338,

Counsel for Petitioner.

Exhibit A

EXECUTIVE DEPARTMENT
OFFICE OF THE SECRETARY OF STATE
STATE HOUSE
ANNAPOLIS, MARYLAND 21404

PATRICIA G. HOLTZ
ACTING SECRETARY OF STATE

A. 2

STATE OF MARYLAND

FOURTH ANNUAL REPORT
OF THE
SECRETARY OF STATE
ON
CHARITABLE ORGANIZATIONS

Article 41, Sections 103A-103L, Annotated
Code of Maryland, and Code of Maryland Regulations
Title 01 Subtitle 02 Chapters 03 and 04

For the period of July 1, 1981 thru June 30, 1982

Harry Hughes, Governor
Samuel Bogley, Lieutenant Governor

Patricia G. Holtz
Acting Secretary of State
July 1982

CONTENTS

Schedule I. Professional Fund-Raiser Counsel and Professional Solicitors

Schedule II. Charitable Organizations

Schedule III. Exempt Organizations

FORWARD

In accordance with the provisions of the Code of Maryland Regulations, the following report has been prepared as of June 30, 1982. As of the close of the period covered by this report, 452 Charitable Organizations were registered with the Secretary of State. This is an increase of 9% over the number of such organizations registered as of June 30, 1981.

Nineteen Professional Solicitors and Fund-Raiser Counsels filed during this period.

The most significant growth occurred in the number of Charitable Organizations which filed as "exempt" organizations under the provisions of Article 41, Section 103C. Such organizations were determined to be exempt from the requirement that they file a registration statement. This is an increase of 10% over the number reported last year.

Patricia G. Holtz
Acting Secretary of State

PATRICIA G. HOLTZ
ACTING SECRETARY OF STATE
ANNAPOLIS, MARYLAND 21404

July 1, 1981 thru June 30, 1982

Registered Charitable Organizations	452
Exempt Status Organizations	1392
Professional Fund Raiser Counsels	22

DISPOSITION OF APPLICATIONS REQUESTING AUTHORIZATION TO EXCEED ARTICLE 41, SECTION 103D FUND-RAISING LIMITATION

July 1, 1982

Organization	*Date Application Approved or Denied*	*Proposed Fund-Raising %*	*Name of Solicitor*	*Charitable Organization's Reason for Seeking Approval*
Maryland Amateur Boys Baseball Champion Series	October 14, 1980	75%	Dennis Advertising	Economically impossible to produce program within 25% limit. (Solicitor never registered.)
Md. Troopers Assoc.	October 15, 1980	64%	Brent-Wyatt Assoc.	Org. selected has reputation and capacity to produce product of high quality and efficient operation.
New Life Corporation	October 15, 1980	48%	Ronald K. Sanders	Use of solicitor only feasible way for organization to raise funds.
Anne Arundel County Professional Firefighters Assoc. Local 1563	January 23, 1981	74%	Domino Productions	Organization incapable of effectively conducting fund raiser.
Baltimore County Firefighters	March 30, 1981	77.1%	Domino Productions	Organization is incapable of effectively conducting a fund raising campaign.
Howard Co. Police Officers Assoc.	May 12, 1981	Denied	Capital Presentations	No fund-raising experience, no manpower.
Howard Co. Police Officers Assoc.	June 1, 1981	80%	Capital Presentations	Organization lacks experience, manpower, and time; past efforts unsuccessful.
FOP, Md. State Police Lodge 12	June 8, 1981	65%	Domino Productions	Organization not capable of conducting effective campaign.
Howard Co. Firefighters Lodge 2000	July 1, 1981	Denied	Capital Presentations	Cost of Country-Western show would exceed limits.
FOP, Md. Troopers Lodge 76	July 8, 1981	77%	Domino Productions	Organization lacks time, expertise and manpower.
Anne Arundel Co. Professional Firefighters Local 1563	October 9, 1981	Denied	Domino Productions	Organization incapable of conducting fundraiser.
Anne Arundel Co. Professional Firefighters Local 1563	Dec. 23, 1981	65%	Domino Productions	To establish a building fund.
FOP, Md. Troopers Lodge 76	March 16, 1982	83%	Domino Productions	To establish a building fund.
FOP, Baltimore City Lodge 3	June 2, 1982	70%	Summerfield Enterprises	Past fund raising activities of the Organization were unsuccessful.
FOP, Md. State Police Lodge 12	June 2, 1982	83%	Domino Productions	To establish a building fund.
Angelo Rizzuto	June 29, 1982	80%	Domino Productions	Proceeds to be used to repair facilities.

Exhibit B

AGREEMENT CONTRACT

1—This agreement entered into by and between the JOSEPH MUNSON CO., INC., 3170 N. Federal Highway, Lighthouse Point, Florida, hereinafter to be known as the Party of the First Part and the FRATERNAL ORDER OF POLICE MONTGOMERY LODGE #35, hereinafter to be known as the Party of the Second Part is for the purpose of holding a Benefit Fund Drive, hereinafter to be known as the "SHOW".

2—The Party of the First Part agrees to take complete charge of the sale and disposition of tickets and records to the Benefit Fund Drive.

3—The Party of the Second Part shall have the right to object to employment of any person and upon receipt of such objection, the Party of the First Part shall immediately discharge the person objected to.

4—The Party of the Second Part agrees to assist and cooperate with the Party of the First Part in all phases of the Benefit Fund Drive, in that, the "SHOW" will be sponsored under the name of the Party of the Second Part and at the request of the Party of the First Part will furnish a contact man to open mail, do the necessary banking required and to assist whenever necessary. It is further agreed that the Party of the Second Part agrees to obtain all license and permits that may be required.

5—It is understood and agreed by and between the Parties hereto, that the expenses of orchestra, entertainers, hall, tickets, telephones, telephone help, office supplies, office rent, stenographic help, insurance, city directory, postage, printing and stationery used in the promoting of the "SHOW" shall be known as joint expenses and shall be paid from gross receipts as well as any other legitimate expenses in connection with the "SHOW" as shall be mutually agreed upon by the Parties hereto.

6—It is agreed that all check, money orders and monies derived from sale of tickets, admissions and door receipts shall be known as gross receipts and shall be made payable to the Party of the Second Part and delivered thereto. Concession receipts, hat and cloakroom receipts shall be the sole property and responsibility of the Party of the Second Part.

7—IN CONSIDERATION of the part to be done and performed by the Party of the First Part in the Benefit Fund Drive, the Party of the First Part is to receive a fee of fifty per-cent (50%) of the Net Proceeds after the joint expenses hereinbefore enumerated and the Party of the Second Part agrees to pay over this fee on Friday of each week and make a settlement after the conclusion of the "SHOW" promotion.

8—It is mutually agreed by and between the Parties hereto, that this contract shall be in force for a period of one (1) year with one (1) "SHOW" to be held at a time and place agreeable to both Parties hereto.

In the event of a failure of the Benefit Fund Drive, all monies derived as gross proceeds shall be used to pay all obligations and any remaining expenses shall be paid by the Party of the First Part, thereby holding the Party of the Second Part blameless for any expenses regardless of the success of the Benefit Fund Drive.

9—In agreement on all of the above enumerated paragraphs and agreements, we the Parties hereto do hereby set our hands and seals this 20th day of

January, 1982, in Montgomery County, City of Gaithersburg, State of Maryland.

JOSEPH MUNSON CO., INC.

JOSEPH MUNSON
Party of the First Part

FRATERNAL ORDER OF POLICE
MONTGOMERY COUNTY LODGE #35

LAWRENCE C. DEAMONS
Party of the Second Part

DONNA E. (ILLEGIBLE)
Witness:

JOHN WILLIAMS
Witness: